

## Federal Deposit Insurance Corporation

## § 390.345

amount of securities sold, the net proceeds received by the State savings association from the issuance, and the amount of covered securities, net of all expenses, to be included as supplementary capital;

(2) Three copies of an executed form of the securities and a copy of any related documents governing the issuance or administration of the securities; and

(3) A certification by the appropriate executive officer indicating that the State savings association complied with all applicable laws and regulations in connection with the offering, issuance, and sale of the securities.

### § 390.342 Capital distributions by State savings associations.

Sections 390.342 through 390.348 apply to all capital distributions by a State savings association (“you”).

### § 390.343 What is a capital distribution?

A capital distribution is:

(a) A distribution of cash or other property to your owners made on account of their ownership, but excludes:

(1) Any dividend consisting only of your shares or rights to purchase your shares; or

(2) If you are a mutual State savings association, any payment that you are required to make under the terms of a deposit instrument and any other amount paid on deposits that the FDIC determines is not a distribution for the purposes of this section;

(b) Your payment to repurchase, redeem, retire or otherwise acquire any of your shares or other ownership interests, any payment to repurchase, redeem, retire, or otherwise acquire debt instruments included in your total capital under subpart Z, and any extension of credit to finance an affiliate’s acquisition of your shares or interests;

(c) Any direct or indirect payment of cash or other property to owners or affiliates made in connection with a corporate restructuring. This includes

your payment of cash or property to shareholders of another savings association or to shareholders of its holding company to acquire ownership in that savings association, other than by a distribution of shares;

(d) Any other distribution charged against your capital accounts if you would not be well capitalized, as set forth in § 390.453(b)(1), following the distribution; and

(e) Any transaction that the FDIC determines, by order or regulation, to be in substance a distribution of capital.

### § 390.344 Definitions applicable to capital distributions.

The following definitions apply to sections 390.342 through 390.348:

*Affiliate* means an affiliate, as defined in regulations governing transactions with affiliates as issued by the Board of Governors of the Federal Reserve System.

*Capital* means total capital, as computed under subpart Z.

*Net income* means your net income computed in accordance with generally accepted accounting principles.

*Retained net income* means your net income for a specified period less total capital distributions declared in that period.

*Shares* means common and preferred stock, and any options, warrants, or other rights for the acquisition of such stock. The term “share” also includes convertible securities upon their conversion into common or preferred stock. The term does not include convertible debt securities prior to their conversion into common or preferred stock or other securities that are not equity securities at the time of a capital distribution.

### § 390.345 Must I file with the FDIC?

Whether and what you must file with the FDIC depends on whether you and your proposed capital distribution fall within certain criteria.

(a) *Application required.*

If:	Then you:
(1) You are not eligible for expedited treatment under § 390.101 .....	Must file an application with the FDIC.